

House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 36

HOUSE BILL 2322

AN ACT

AMENDING SECTION 42-5075, ARIZONA REVISED STATUTES; RELATING TO THE PRIME CONTRACTING TRANSACTION PRIVILEGE TAX CLASSIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-5075, Arizona Revised Statutes, is amended to
3 read:

4 42-5075. Prime contracting classification; exemptions;
5 definitions

6 A. The prime contracting classification is comprised of the business
7 of prime contracting and dealership of manufactured buildings. The sale of
8 a used manufactured building is not taxable under this chapter.

9 B. The tax base for the prime contracting classification is sixty-five
10 per cent of the gross proceeds of sales or gross income derived from the
11 business. The following amounts shall be deducted from the gross proceeds
12 of sales or gross income before computing the tax base:

13 1. The sales price of land, which shall not exceed the fair market
14 value.

15 2. Sales and installation of groundwater measuring devices required
16 under section 45-604 and groundwater monitoring wells required by law,
17 including monitoring wells installed for acquiring information for a permit
18 required by law.

19 3. The sales price of furniture, furnishings, fixtures, appliances,
20 and attachments that are not incorporated as component parts of or attached
21 to a manufactured building or the setup site. The sale of such items may be
22 subject to the taxes imposed by article 1 of this chapter separately and
23 distinctly from the sale of the manufactured building.

24 4. The gross proceeds of sales or gross income received from a
25 contract entered into for the construction, alteration, repair, addition,
26 subtraction, improvement, movement, wrecking or demolition of any building,
27 highway, road, railroad, excavation, manufactured building or other
28 structure, project, development or improvement located in a military reuse
29 zone for providing aviation or aerospace services or for a manufacturer,
30 assembler or fabricator of aviation or aerospace products within five years
31 after the zone is initially established or renewed under section 41-1531. To
32 qualify for this deduction, before beginning work under the contract the
33 prime contractor must obtain a letter of qualification from the department
34 of revenue.

35 5. The gross proceeds of sales or gross income derived from a contract
36 to construct a qualified environmental technology manufacturing, producing
37 or processing facility, as described in section 41-1514.02, and from
38 subsequent construction and installation contracts that begin within ten
39 years after the start of initial construction. To qualify for this
40 deduction, before beginning work under the contract the prime contractor must
41 obtain a letter of qualification from the department of revenue. This
42 paragraph shall apply for ten full consecutive calendar or fiscal years after
43 the start of initial construction.

44 6. The gross proceeds of sales or gross income from a contract to
45 provide for one or more of the following actions, or a contract for site

1 preparation, constructing, furnishing or installing machinery, equipment or
2 other tangible personal property, including structures necessary to protect
3 exempt incorporated materials or installed machinery or equipment, and
4 tangible personal property incorporated into the project, to perform one or
5 more of the following actions in response to a release or suspected release
6 of a hazardous substance, pollutant or contaminant from a facility to the
7 environment, unless the release was authorized by a permit issued by a
8 governmental authority:

9 (a) Actions to monitor, assess and evaluate such a release or a
10 suspected release.

11 (b) Excavation, removal and transportation of contaminated soil and
12 its treatment or disposal.

13 (c) Treatment of contaminated soil by vapor extraction, chemical or
14 physical stabilization, soil washing or biological treatment to reduce the
15 concentration, toxicity or mobility of a contaminant.

16 (d) Pumping and treatment or in situ treatment of contaminated
17 groundwater or surface water to reduce the concentration or toxicity of a
18 contaminant.

19 (e) The installation of structures, such as cutoff walls or caps, to
20 contain contaminants present in groundwater or soil and prevent them from
21 reaching a location where they could threaten human health or welfare or the
22 environment.

23 This paragraph does not include asbestos removal or the construction or use
24 of ancillary structures such as maintenance sheds, offices or storage
25 facilities for unattached equipment, pollution control equipment, facilities
26 or other control items required or to be used by a person to prevent or
27 control contamination before it reaches the environment.

28 7. The gross proceeds of sales or gross income that is derived from
29 a contract entered into for the installation, assembly, repair or maintenance
30 of machinery, equipment or other tangible personal property that is deducted
31 from the tax base of the retail classification pursuant to section 42-5061,
32 subsection B, or that is exempt from use tax pursuant to section 42-5159,
33 subsection B, and that does not become a permanent attachment to a building,
34 highway, road, railroad, excavation or manufactured building or other
35 structure, project, development or improvement. If the ownership of the
36 realty is separate from the ownership of the machinery, equipment or tangible
37 personal property, the determination as to permanent attachment shall be made
38 as if the ownership were the same. The deduction provided in this paragraph
39 does not include gross proceeds of sales or gross income from that portion
40 of any contracting activity which consists of the development of, or
41 modification to, real property in order to facilitate the installation,
42 assembly, repair, maintenance or removal of machinery, equipment or other
43 tangible personal property that is deducted from the tax base of the retail
44 classification pursuant to section 42-5061, subsection B or that is exempt

1 from use tax pursuant to section 42-5159, subsection B. For purposes of this
2 paragraph, "permanent attachment" means at least one of the following:

3 (a) To be incorporated into real property.

4 (b) To become so affixed to real property that it becomes a part of
5 the real property.

6 (c) To be so attached to real property that removal would cause
7 substantial damage to the real property from which it is removed.

8 8. The gross proceeds of sales or gross income received from a
9 contract for constructing any lake facility development in a commercial
10 enhancement reuse district that is designated pursuant to section 9-499.08
11 if the prime contractor maintains the following records in a form
12 satisfactory to the department and to the city or town in which the property
13 is located:

14 (a) The certificate of qualification of the lake facility development
15 issued by the city or town pursuant to section 9-499.08, subsection D.

16 (b) All state and local transaction privilege tax returns for the
17 period of time during which the prime contractor received gross proceeds of
18 sales or gross income from a contract to construct a lake facility
19 development in a designated commercial enhancement reuse district, showing
20 the amount exempted from state and local taxation.

21 (c) Any other information that the department considers to be
22 necessary.

23 9. The gross proceeds of sales or gross income attributable to the
24 purchase of machinery, equipment or other tangible personal property that is
25 exempt from or deductible from transaction privilege and use tax under:

26 (a) Section 42-5061, subsection A, paragraph 25 or 29.

27 (b) Section 42-5061, subsection B.

28 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b),
29 (c), (d), (e), (f), (i) or (j).

30 (d) Section 42-5159, subsection B.

31 10. The gross proceeds of sales or gross income received from a
32 contract for the construction of an environmentally controlled facility for
33 the raising of poultry for the production of eggs and the sorting, cooling
34 and packaging of eggs.

35 11. The gross proceeds of sales or gross income that is derived from
36 a contract entered into with a person who is engaged in the commercial
37 production of livestock, livestock products or agricultural, horticultural,
38 viticultural or floricultural crops or products in this state for the
39 construction, alteration, repair, improvement, movement, wrecking or
40 demolition or addition to or subtraction from any building, highway, road,
41 excavation, manufactured building or other structure, project, development
42 or improvement used directly and primarily to prevent, monitor, control or
43 reduce air, water or land pollution.

44 12. The gross proceeds of sales or gross income that is derived from
45 the installation, assembly, repair or maintenance of clean rooms that are

1 deducted from the tax base of the retail classification pursuant to section
2 42-5061, subsection B, paragraph 17.

3 13. For taxable periods beginning from and after June 30, 2001, the
4 gross proceeds of sales or gross income derived from a contract entered into
5 for the construction of a residential apartment housing facility that
6 qualifies for a federal housing subsidy for low income persons over sixty-two
7 years of age and that is owned by a nonprofit charitable organization that
8 has qualified under section 501(c)(3) of the internal revenue code.

9 14. For taxable periods beginning from and after December 31, 1996 and
10 ending before January 1, 2011, ~~the contractor's retail cost of solar energy~~
11 ~~devices that the contractor supplies and installs pursuant to contracts~~ GROSS
12 PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A CONTRACT TO PROVIDE AND
13 INSTALL A SOLAR ENERGY DEVICE. The deduction shall not exceed five thousand
14 dollars for each ~~solar energy device~~ CONTRACT. Before deducting any amount
15 under this paragraph, the contractor shall register with the department as
16 a solar energy contractor. By registering, the contractor acknowledges that
17 it will make its books and records relating to sales of solar energy devices
18 available to the department for examination.

19 15. The gross proceeds of sales or gross income derived from a contract
20 entered into for the construction of a launch site, as defined in 14 Code of
21 Federal Regulations section 401.5.

22 16. The gross proceeds of sales or gross income derived from a contract
23 entered into for the construction of a domestic violence shelter that is
24 owned and operated by a nonprofit charitable organization that has qualified
25 under section 501(c)(3) of the internal revenue code.

26 17. The gross proceeds of sales or gross income derived from contracts
27 to perform postconstruction treatment of real property for termite and
28 general pest control, including wood destroying organisms.

29 C. Entitlement to the deduction pursuant to subsection B, paragraph
30 7 of this section is subject to the following provisions:

31 1. A prime contractor may establish entitlement to the deduction by
32 both:

33 (a) Marking the invoice for the transaction to indicate that the gross
34 proceeds of sales or gross income derived from the transaction was deducted
35 from the base.

36 (b) Obtaining a certificate executed by the purchaser indicating the
37 name and address of the purchaser, the precise nature of the business of the
38 purchaser, the purpose for which the purchase was made, the necessary facts
39 to establish the deductibility of the property under section 42-5061,
40 subsection B, and a certification that the person executing the certificate
41 is authorized to do so on behalf of the purchaser. The certificate may be
42 disregarded if the prime contractor has reason to believe that the
43 information contained in the certificate is not accurate or complete.

1 2. A person who does not comply with paragraph 1 of this subsection
2 may establish entitlement to the deduction by presenting facts necessary to
3 support the entitlement, but the burden of proof is on that person.

4 3. The department may prescribe a form for the certificate described
5 in paragraph 1, subdivision (b) of this subsection. The department may also
6 adopt rules that describe the transactions with respect to which a person is
7 not entitled to rely solely on the information contained in the certificate
8 provided in paragraph 1, subdivision (b) of this subsection but must instead
9 obtain such additional information as required in order to be entitled to the
10 deduction.

11 4. If a prime contractor is entitled to a deduction by complying with
12 paragraph 1 of this subsection, the department may require the purchaser who
13 caused the execution of the certificate to establish the accuracy and
14 completeness of the information required to be contained in the certificate
15 which would entitle the prime contractor to the deduction. If the purchaser
16 cannot establish the accuracy and completeness of the information, the
17 purchaser is liable in an amount equal to any tax, penalty and interest which
18 the prime contractor would have been required to pay under article 1 of this
19 chapter if the prime contractor had not complied with paragraph 1 of this
20 subsection. Payment of the amount under this paragraph exempts the purchaser
21 from liability for any tax imposed under article 4 of this chapter. The
22 amount shall be treated as a transaction privilege tax to the purchaser and
23 as tax revenues collected from the prime contractor in order to designate the
24 distribution base for purposes of section 42-5029.

25 D. Subcontractors or others who perform services in respect to any
26 improvement, building, highway, road, railroad, excavation, manufactured
27 building or other structure, project, development or improvement are not
28 subject to tax if they can demonstrate that the job was within the control
29 of a prime contractor or contractors or a dealership of manufactured
30 buildings and that the prime contractor or dealership is liable for the tax
31 on the gross income, gross proceeds of sales or gross receipts attributable
32 to the job and from which the subcontractors or others were paid.

33 E. Amounts received by a contractor for a project are excluded from
34 the contractor's gross proceeds of sales or gross income derived from the
35 business if the person who hired the contractor executes and provides a
36 certificate to the contractor stating that the person providing the
37 certificate is a prime contractor and is liable for the tax under article 1
38 of this chapter. The department shall prescribe the form of the certificate.
39 If the contractor has reason to believe that the information contained on the
40 certificate is erroneous or incomplete, the department may disregard the
41 certificate. If the person who provides the certificate is not liable for
42 the tax as a prime contractor, that person is nevertheless deemed to be the
43 prime contractor in lieu of the contractor and is subject to the tax under
44 this section on the gross receipts or gross proceeds received by the
45 contractor.

1 F. Every person engaging or continuing in this state in the business
2 of prime contracting or dealership of manufactured buildings shall present
3 to the purchaser of such prime contracting or manufactured building a written
4 receipt of the gross income or gross proceeds of sales from such activity and
5 shall separately state the taxes to be paid pursuant to this section.

6 G. For purposes of section 42-5032.01, the department shall separately
7 account for revenues collected under the prime contracting classification
8 from any prime contractor engaged in the preparation or construction of a
9 multipurpose facility, and related infrastructure, that is owned, operated
10 or leased by the tourism and sports authority pursuant to title 5, chapter 8.

11 H. The gross proceeds of sales or gross income derived from a contract
12 for lawn maintenance services are not subject to tax under this section if
13 the contract does not include landscaping activities. Lawn maintenance
14 service is a service pursuant to section 42-5061, subsection A, paragraph 1,
15 and includes lawn mowing and edging, weeding, repairing sprinkler heads or
16 drip irrigation heads, seasonal replacement of flowers, refreshing gravel,
17 lawn de-thatching, seeding winter lawns, leaf and debris collection and
18 removal, tree or shrub pruning or clipping, garden and gravel raking and
19 applying pesticides, as defined in section 3-361, and fertilizer materials,
20 as defined in section 3-262.

21 I. The gross proceeds of sales or gross income derived from
22 landscaping activities are subject to tax under this section. Landscaping
23 includes installing lawns, grading or leveling ground, installing gravel or
24 boulders, planting trees and other plants, felling trees, removing or
25 mulching tree stumps, removing other imbedded plants, building or modifying
26 irrigation berms, repairing sprinkler or watering systems, installing
27 railroad ties and installing underground sprinkler or watering systems.

28 J. For purposes of this section:

29 1. "Contracting" means engaging in business as a contractor.

30 2. "Contractor" is synonymous with the term "builder" and means any
31 person, firm, partnership, corporation, association or other organization,
32 or a combination of any of them, that undertakes to or offers to undertake
33 to, or purports to have the capacity to undertake to, or submits a bid to,
34 or does personally or by or through others, construct, alter, repair, add to,
35 subtract from, improve, move, wreck or demolish any building, highway, road,
36 railroad, excavation, manufactured building or other structure, project,
37 development or improvement, or to do any part of such a project, including
38 the erection of scaffolding or other structure or works in connection with
39 such a project, and includes subcontractors and specialty contractors. For
40 all purposes of taxation or deduction, this definition shall govern without
41 regard to whether or not such contractor is acting in fulfillment of a
42 contract.

43 3. "Dealership of manufactured buildings" means a dealer who either:

44 (a) Is licensed pursuant to title 41, chapter 16 and who sells at
45 retail manufactured buildings.

1 (b) Supervises, performs or coordinates the excavation and completion
2 of site improvements, setup or moving of a manufactured building including
3 the contracting, if any, with any subcontractor or specialty contractor for
4 the completion of the contract.

5 4. "Manufactured building" means a manufactured home, mobile home or
6 factory-built building, as defined in section 41-2142.

7 5. "Prime contracting" means engaging in business as a prime
8 contractor.

9 6. "Prime contractor" means a contractor who supervises, performs or
10 coordinates the construction, alteration, repair, addition, subtraction,
11 improvement, movement, wreckage or demolition of any building, highway, road,
12 railroad, excavation, manufactured building or other structure, project,
13 development or improvement including the contracting, if any, with any
14 subcontractors or specialty contractors and who is responsible for the
15 completion of the contract.

16 7. "Sale of a used manufactured building" does not include a lease of
17 a used manufactured building.

APPROVED BY THE GOVERNOR APRIL 7, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 2003.

Passed the House February 18, 2003

Passed the Senate April 1, 2003

by the following vote: 59 Ayes,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

0 Nays, 1 Not Voting

Jake Flake
Speaker of the House

Ken Blumenthal
President of the Senate

Norman L. Moore
Chief Clerk of the House

Charmian Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

2 day of April, 2003

at 12:40 o'clock P M.

Sandra Gandy
Secretary to the Governor

Approved this 7 day of

April, 2003

at 2:35 o'clock P M.

Jan Nagel
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 7 day of April, 2003

at 4:27 o'clock P M.

Janice K. Brewer
Secretary of State

H.B. 2322